

opening paragraph of the Agreement. Second, it cites the first paragraph under Article I, Scope and Intent of Agreement, which provides that "the Parties will extend certain arrangements to one another within each area in which they both operate within the State for purposes of connection and the exchange of Local Traffic between their respective end-user customers."

19. CenturyTel's claim that it has no obligation to port numbers that it "believes" may not be related to IDT's end users is without merit. CenturyTel's statutory obligation to port numbers upon request from a telecommunications carrier, such as IDT, contains no such limitation. As stated above, the parties' number porting obligations are independent of the Agreement.^{31/} The parties' Agreement in no way contravenes or undermines CenturyTel's duty to port numbers under the law and specifically states that the parties will port numbers consistent with law.^{32/} The Agreement does not provide CenturyTel any special relief from the law, nor can it. As the FCC has stated, providers cannot vitiate their porting obligations by including non-porting-related limitations in their agreements.^{33/} Indeed, in the wireless context, "no carrier may unilaterally refuse to port with another carrier because that carrier will not enter into an interconnection agreement."^{34/}

20. CenturyTel's sole reason for refusing to implement IDT's port requests is based on a mistaken "belief that the porting requests submitted by IDT are not related to IDT end users." CenturyTel has no right to refuse to port numbers based on the identity of IDT's end

^{31/} *Id.* Article III § 23 ("This Agreement shall be governed by and construed in accordance with applicable federal and (to the extent not inconsistent therewith) domestic laws of the state where the services are provided or the facilities reside").

^{32/} Agreement, Article IV § 8.1.1 ("The Parties agree that they shall develop and deploy LNP in accordance with the Act, such binding FCC and State mandates, and industry standards, as may be applicable").

^{33/} 2003 *Wireless-Wireless Porting Order* ¶ 11.

^{34/} *First Report and Order* ¶ 21.

users. CenturyTel's refusal to port its customers' numbers is a violation of the law and is a breach of the Agreement.

21. CenturyTel fails to understand the legal definition of "end users." IDT's provision of telecommunications service to its customers is the provision of service to an end user. The FCC has explicitly stated that the provision of wholesale telecommunications services is considered the provision of telecommunications services to an end user by a telecommunications carrier.^{35/} When an entity such as Bresnan purchases services from telecommunications carriers such as IDT to support Bresnan's interconnected VoIP services, Bresnan is a business end user.

22. It is IDT's status as a "telecommunications carrier" and its provision of local exchange services that determines its entitlement to LNP processing under the Act, not the businesses of its end users.^{36/} As recognized by the FCC, wholesale entities such as interconnected VoIP service providers must purchase telecommunications services from regulated telecommunications carriers like IDT in order to originate and terminate calls on the public switched network, access 911 services, and obtain numbering resources.^{37/} CenturyTel cannot refuse to fulfill contract or legal obligations to consumers and co-carriers such as IDT because of the type of end user IDT serves. This is discrimination.

^{35/} *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd. 21905 ¶ 263 (1996) ("the definition of telecommunications services is intended to clarify that telecommunications services are common carrier services, which include wholesale services to other carriers").

^{36/} *Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776 ¶ 785 (1997) (finding telecommunications services "include services offered to other carriers, such as exchange access service, which is offered on a common carrier basis, but is offered primarily to other carriers").

^{37/} See, e.g., *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd. 10245 ¶ 38 (2005) (noting that VoIP service providers obtain 911 services from competitive local exchange carriers); *IP-Enabled Services*, 19 FCC Rcd. 4863 ¶ 12 (2004) (recognizing that VoIP service providers obtain telecommunications services from telecommunications carriers in order to provide services to the VoIP service provider's customers).

23. Although the Agreement itself does not define "end user," §1.97 of Appendix C of the agreement provides that undefined terms are to be "construed in accordance with CenturyTel's tariffs or, if not defined therein, under customary usage in the telecommunication industry." In pertinent part, CenturyTel's tariffs define end user as "any customer of an interstate or foreign telecommunications service that is not a carrier."^{38/} (Emphasis added) Bresnan readily fits this definition. Bresnan is not a telecommunications carrier because it offers interconnected VoIP service.^{39/} Bresnan is an end user customer of IDT's telecommunications services

24. CenturyTel's interpretation of the Agreement to apply only to the direct, retail provision of services is not only legally unsound, it is profoundly anti-competitive. Interconnection agreements are the primary mechanism established by Congress to open local telephone markets to competition. CenturyTel, however, seeks to use the Agreement to stave off competition. Cable-based interconnected VoIP service, such as that offered by Bresnan, provides one of the few competitive alternatives available to residential customers in rural

^{38/} See e.g., CenturyTel FCC Tariff No. 1, § 2 pg. 68. See also, CenturyTel Tariff PSC Mont. AC-5 § 2-49 (The term "End User" means any customer of an intrastate telecommunications service that is not a carrier, except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes, and a person or entity that offers telecommunications service exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller").

^{39/} Report and Order and Notice of Proposed Rulemaking, FCC 06-94, 38 CR 1013, *Universal Service Contribution Methodology, Report and Order* ("USF Contribution Order") and *Notice of Proposed Rulemaking* ¶ 35 (rel. June 27, 2006) ("The Commission has not yet classified interconnected VoIP services as 'telecommunications services' or 'information services' under the definitions of the Act"). It is well-established law that a single provider may offer both regulated and unregulated services and function as both a regulated and non-regulated entity. See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and NPRM, 20 FCC Rcd. 14853 ¶ 73, n.221 (rel. Sept. 23, 2005) ("*Wireline Broadband Order*") (citing *NARUC v. FCC* 533 F.2d 601, 698 (D.C. Cir. 1976) ("*NARUC II*") ("[I]t is at least logical to conclude that one can be a common carrier with regard to some activities but not others.")). See also, *Southwestern Bell Telephone Company v. FCC*, 19 F.3d 1475, 1481 (D.C. Cir. 1994). As the FCC has recognized, absent any legal compulsion to operate as a common carrier, it is ultimately up to the service provider to determine whether it will function as a common carrier or private carrier. See, *Wireline Broadband Order* ¶ 89 (confirming that broadband providers have the flexibility to offer transmission services as common carriers or private carriers).

markets.^{40/} Thus, competition will have to come from those that have deployed alternative last mile facilities, such as cable companies. The only practical method by which these competitive services can be made available to consumers is through arrangements like that between IDT and Bresnan.^{41/}

25. Numerous state commissions, including New York, Illinois, Iowa, and Ohio, have found that the services provided to a wholesale service provider are well within the scope of what telecommunications carriers commonly do and are "no different than [the services] performed by other competitive local exchange carriers."^{42/} As a result, these state commissions determined that telecommunications carriers offering services to wholesale service providers were entitled to interconnection and other rights under § 251 and § 252 of the Act because those telecommunications carriers were "acting in a role no different than other telecommunications carriers whose network could interconnect with [ILECs] so that traffic is terminated to and from

^{40/} *Illinois Order* at 13 (noting that benefits of competition have been slow to reach rural areas and that arrangements like those at issue here "potentially allows those in rural areas to benefit from the competitive telecommunications market").

^{41/} *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, First Report and Order and NPRM 20 FCC Rcd. 10245 ¶ 40 (2005) ("*E911 VoIP Order*") (recognizing that interconnected VoIP providers' compliance with E911 obligations "is necessarily dependent on the ability of the interconnected VoIP providers to have access to the trunks and selective routers via competitive LECs that have negotiated access with incumbent LECs. . .").

^{42/} Case 05-C-0170, *Petition of Sprint Communications Company L. P., Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Intercarrier Agreement with Independent Companies*, Order Resolving Arbitration Issues (N.Y.P.S.C. May 24, 2005) ("*New York Order*"), on appeal *Berkshire Telephone Corp. v. Sprint Communications Co. L.P.*, Civ. Action No. 05-CV-6502 (CJS) (MWP) (W.D.N.Y. filed Sept. 26, 2005); Case Nos. 050259, *et al., Cambridge Telephone Company, et al. Petitions for Declaratory Relief and/or Suspensions for Modification Relating to Certain Duties under §§ 251(b) and (c) of the Federal Telecommunications Act* (I.C.C. July 13, 2005) ("*Illinois Order*"); Docket No. ARB-05-02, *Arbitration of Sprint Communications Co. v. Ace Communications Group, et al.*, Order on Rehearing (I.U.B. Nov. 28, 2005) ("*Iowa Order*"); Case Nos. 04-1494-TP-UNC, *et al., Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines Filed by: The Champaign Telephone Co., Telephone Services Co., the Germantown Independent Telephone Co., and Doylestown Telephone Co.*, Finding and Order (P.U.C.O. Jan. 26, 2005) ("*Ohio Order*"), *reh'g denied in pertinent part*, Order on Rehearing (P.U.C.O. Apr. 13, 2005).

each network and across networks.”^{43/} These rights include the immediate porting of numbers upon request.

26. If CenturyTel believes that it should be exempt from such competition, the Act provides a clear mechanism to achieve that result. Section 251(f)(2) of the Act contemplates that a carrier such as CenturyTel may be excused from market opening requirements such as number portability, by petitioning the Commission for a suspension or modification of its § 251(b) obligations.^{44/} CenturyTel has made no such petition. On the contrary, CenturyTel processes the porting requests of other carriers. CenturyTel has indicated that it ports numbers pursuant to its Montana Interconnection Agreements with Verizon Wireless, AirTel Wireless, LLC, and Granite Telecommunications, LLC. CenturyTel appears to believe that customers seeking to port to Bresnan/IDT have less rights than customers porting to other carriers. CenturyTel’s actions reflect the very type of discrimination and anti-competitive conduct that the Act and the Montana Commission have sought to prevent.^{45/} The Commission should intervene to eliminate the harm to Montana consumers caused by CenturyTel’s blatant anti-competitive and discriminatory conduct by directing CenturyTel to process all number porting requests submitted by IDT immediately.

^{43/} *Ohio Order* at 4-5, ¶ 7.

^{44/} 47 U.S.C. § 251(f) (2) (providing that a local exchange carrier with less than two percent of the Nation’s subscriber lines may “petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c)”).

^{45/} 47 U.S.C. § 202 (a) (“It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage”). *See also*, Mont. Code Ann. § 69-3-321 (the Commission is required to proceed against any public utility upon a complaint that “any regulations, measurements, practices, or acts whatsoever affecting or relating to the production, transmission, delivery, or furnishing of heat, light, water, power, or regulated telecommunications service, or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory” or “any service is inadequate”).

27. CenturyTel's refusal to port local numbers is a violation of the law. CenturyTel's interpretation of the Agreement is not correct and could not be correct because the Commission has held that "[a]ny provision or term of [an] Agreement that is in conflict with the law, whether or not specifically addressed by the Commission, is rejected as a matter of law and not in the public interest." Thus, CenturyTel's interpretation of the Agreement as limiting its responsibility to comply with local number portability is necessarily void under state law and the Commission's Order approving the Agreement.^{46/}

IDT'S REQUEST FOR EXPEDITED COMPLAINT PROCEEDING

28. Pursuant to Mont. Code Ann. §§ 69-3-829 and 830, IDT respectfully requests that the Commission apply its expedited complaint procedure to this case.

29. IDT has attempted in good faith to resolve its disagreement with CenturyTel prior to filing this Complaint and Petition for Expedited Complaint Proceeding. Mont. Code Ann. § 69-3-830(1)(a)(i).

30. This Complaint includes a description of the facts, including relevant documentation, of the issues in dispute and the position of IDT and CenturyTel with respect to those issues. Mont. Code Ann. § 69-3-830(1)(a)(ii).

31. IDT informed CenturyTel of its intent to file a petition for expedited complaint proceeding on July 19, 2006 and August 11, 2006, which is more than 10 days before IDT filed this Complaint with the Commission. Mont. Code Ann. § 69-3-830(1)(a)(iii).

^{46/} See, Commission Order ¶ 13. See also, Mont. Code Ann. §§ 28-2-604, 28-2-701, 28-2-702.

29. As noted on the attached Certificate of Service, IDT has provided a copy of this Complaint and Petition to CenturyTel by e-mail and overnight mail on the date the Commission received this Complaint and Petition pursuant to Mont. Code Ann. § 69-3-830(1)(b).

REQUEST FOR RELIEF

32. WHEREFORE, IDT files this Complaint and Petition for Expedited Complaint Proceeding.

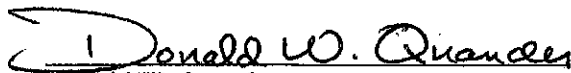
33. IDT respectfully requests the Commission enforce the state and federal laws applicable to CenturyTel and require it to honor immediately all requests by Montana consumers to have their numbers ported consistent with the rules of the Commission and the FCC.

34. Pursuant to Mont. Code Ann. §§ 69-3-829 and 830, to the extent deemed necessary, IDT respectfully requests that the Commission appoint a hearing examiner and establish a schedule setting dates for: 1) a conference between and among the Parties and the examiner to establish discovery deadlines and a hearing date, and 2) the examiner's proposed decision on this Complaint.

35. IDT respectfully requests that the Commission, after an expedited hearing on this Complaint, issue an Order prohibiting CenturyTel from refusing to comply with state and federal laws requiring it to honor IDT's number portability requests in the future and grant to IDT any and all other relief to which it may be entitled including, but not limited to, monetary damages pursuant to Mont. Code Ann. §§ 69-3-830 (11).

DATED this 21st day of August, 2006.

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Exhibit A

Expedited Complaint Statement

The following is a statement of the issues raised in the IDT Complaint. This statement is in addition to any and all points and matters raised in the body of the Complaint.

I. CenturyTel's Position:

- CenturyTel would not honor IDT's LNP requests because, according to the CenturyTel Letter, CenturyTel had "reason to believe" that the LNP requests "were not related to IDT's end users" pursuant to the Agreement.

II. IDT's Positions:

Violation of Federal Law:

- CenturyTel's refusal to port is in violation of § 251(b) of the federal Act. Section 251(b)(2) of the Act requires that all local exchange carriers provide number portability, to the extent technically feasible, in accordance with the requirements prescribed by the FCC.
- CenturyTel's refusal to port is in violation of FCC rules § 52.21(k)(1) and § 52.23 related to implementation of local number portability. CenturyTel is also in violation of its duty to route traffic to ported numbers without any degradation in service quality or network reliability when customers switch carriers.
- CenturyTel is in violation of FCC Orders and policies regarding implementation of local number portability as set forth in the body of the Complaint.
- CenturyTel is discriminating between similarly situated customers in violation of § 202 (a) of the Act. CenturyTel customers seeking to transition their service to Bresnan/IDT are provided fewer rights than those customers seeking to transfer their service and telephone number to other providers in CenturyTel's service areas.
- CenturyTel is engaging in improper re-verification by questioning the identity of IDT's customers in violation of FCC policies and § 64.1120(a)(2) of the FCC's rules by conditioning execution of IDT's port request on the identity of IDT's end user.
- CenturyTel's refusal to port local numbers is a violation of FCC policies and § 64.1190(d)(2) rules preventing improper carrier freezes, *de facto* or otherwise, absent customer consent.

Violation of State Law:

- CenturyTel's refusal to port is in violation of the Mont. Admin. Register § 38-5-4074 requiring that "[a]ll facilities-based LECs shall provide number portability so that end users may retain the same telephone number as they change from one service provider to another as long as they remain at the same location or if moving, retain the same NXX code."

- CenturyTel's refusal to port is in violation of Mont. Admin. Register § 38-5-4002(16) because it is impairing its customers' quality, reliability, and convenience when changing service providers while retaining the same number.
- CenturyTel is discriminating between similarly situated customers in violation of Mont. Code Ann. § 69-3-321(b). CenturyTel customers seeking to transition their service to Bresnan/IDT are provided fewer rights than those customers seeking to transfer their service and telephone number to other providers in CenturyTel's service areas.
- CenturyTel is engaging in improper re-verification by questioning the identity of IDT's customers in violation of Commission policies and Mont. Admin. Register § 38-5-3801(3).
- CenturyTel's refusal to port local numbers is a violation of Commission policies and Mont. Admin. Register § 38-5-3817(2) preventing improper carrier freezes, *de facto* or otherwise, absent customer consent.

CenturyTel is in Breach of its Interconnection Agreement with IDT

CenturyTel is in breach of the following provisions in the Agreement:

- Article III, § 13.
- Article III, § 23.
- Article IV, § 8.1.

CenturyTel is in Violation of the Commission's Order Approving the Interconnection Agreement:

- CenturyTel's conduct violates the law. According to the Commission's Order, any provisions in the Agreement that sanction such conduct are void pursuant to Mont. Code Ann. §§ 28-2-604, 28-2-701, 28-2-702.
- CenturyTel's refusal to port local numbers is a violation of the law. CenturyTel's interpretation of the Agreement is not correct and cannot be correct because as the Commission has held "[a]ny provision or term of this Agreement that is in conflict with the law, whether or not specifically addressed by the Commission, is rejected as a matter of law and not in the public interest." Thus, CenturyTel's interpretation of the Agreement as limiting its responsibility to comply with local number portability is necessarily void under state law and the Commission's Order approving the Agreement.

Exhibit B

TRAFFIC EXCHANGE AGREEMENT

BETWEEN

CENTURYTEL OF MONTANA, INC.

AND

IDT AMERICA, CORP.

IN THE STATE OF MONTANA

This Traffic Exchange Agreement (the "Agreement") is by and between CenturyTel of Montana, Inc. with the address for purposes of this Agreement at 100 CenturyTel Drive, Monroe, Louisiana 71203 (collectively "CenturyTel"), and IDT America, Corp. ("IDT"), in its capacity as a certified Provider of local two-way wireline dial-tone service, with its address for this Agreement at 520 Broad Street, Newark, New Jersey 07102 (CenturyTel and IDT being referred to collectively as the "Parties" and individually as a "Party"). This Agreement covers services in the State of Montana only (the "State").

WHEREAS, connection between Local Exchange Carriers (LECs) is necessary and desirable for the mutual exchange and termination of traffic originating on each LEC's network; and

WHEREAS, the Parties desire to exchange such traffic and related signaling in a technically and economically efficient manner at defined and mutually agreed upon connection points; and

WHEREAS, the Parties wish to enter into an agreement to interconnect their respective telecommunications networks on terms that are fair and equitable to both Parties; and

WHEREAS, Section 251 of the Telecommunications Act of 1996 (the "Act") imposes specific obligations on LECs with respect to the interconnection of their networks;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CenturyTel and IDT hereby covenant and agree as follows:

ARTICLE I SCOPE AND INTENT OF AGREEMENT

Pursuant to this Agreement, the Parties will extend certain arrangements to one another within each area in which they both operate within the State for purposes of connection and the exchange of Local Traffic between their respective end-user customers. This Agreement is an integrated package that reflects a balancing of interests critical to the Parties. The Parties agree that their entrance into this Agreement is without prejudice to and does not waive any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements and/or matters related to CenturyTel's cost recovery covered in this Agreement. IDT agrees to negotiate reciprocal terms and conditions with CenturyTel based on this Agreement.

The services and facilities to be provided to IDT by CenturyTel in satisfaction of this Agreement may be provided pursuant to CenturyTel tariffs and then current practices. Should such services and facilities be modified by tariff or by Order, including any modifications resulting from other Commission proceedings, federal court review or other judicial action, and unless otherwise specified herein, such modifications will be deemed to automatically supersede any rates and terms and conditions of this Agreement. The Parties shall cooperate with one another for the purpose of incorporating required modifications into this Agreement.

CenturyTel represents and warrants that it is a "rural telephone company" as that term is defined in the Act, 47 U.S.C. 153. Pursuant to Section 251 (f)(1) of the Act, CenturyTel is exempt from Section 251 (c) of the Act. Notwithstanding such exemption, CenturyTel has entered into and accepted this Agreement for purposes of exchanging local traffic, as defined in Article IV, Section 3 herein, with CLEC. CenturyTel's execution of the Agreement does not in any way constitute a waiver or limitation of CenturyTel's rights under Section 251 (f)(1) or 251 (f)(2) of the Act. Accordingly, CenturyTel expressly reserves the right to assert its right to an exemption or waiver and modification of Section 251 (c) of the Act, in response to other requests for interconnection by CLEC or any other carrier.

ARTICLE II

DEFINITIONS

1. General Definitions.

Except as otherwise specified herein, in case of any interpretation question, the standard definitions in CenturyTel's Section 251 Interconnection agreement template as set forth in Appendix C attached to this Agreement and made a part hereof shall apply to all Articles and Appendices contained in this Agreement. Additional definitions that are specific to the matters covered in a particular Article may appear in that Article. To the extent that there may be any conflict between a definition set forth in Appendix C and any definition in a specific Article or Appendix, the definition set forth in the specific Article or Appendix shall control with respect to that Article or Appendix.

ARTICLE III GENERAL PROVISIONS

1. Scope of General Provisions.

Except as may otherwise be set forth in a particular Article or Appendix of this Agreement, in which case the provisions of such Article or Appendix shall control, these General Provisions apply to all Articles and Appendices of this Agreement.

2. Term and Termination.

2.1 Term.

Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be for a period of two (2) years from the Effective Date as defined in Section 36 and therefore defined as the "Initial Term". This Agreement shall thereafter automatically renew for successive one (1) year periods (each a "Renewal Term"; the Initial Term and all Renewal Terms are collectively referred to as the "Term"), unless either party provides written notice of cancellation to the other at least ninety (90) days prior to the end of the Initial Term or the Renewal Term, as the case may be.

2.2 Post Termination Arrangements.

Except in the case of termination as a result of either Party's Default under Section 2.3 below, or a termination upon sale, pursuant to Section 2.5, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements may continue:

- (a) As if under this Agreement, if either Party has requested negotiations for a new agreement, (i) until this Agreement has been replaced by a new agreement, or (ii) for up to one hundred eighty (180) calendar days following the date that either Party has given notice, pursuant to Section 2.1, of its desire to terminate this Agreement.
- (b) If this Agreement is not continued pursuant to subsection (a) preceding under (i) a new agreement voluntarily executed by the Parties; (ii) standard terms and conditions approved and made generally effective by the Commission, if any; (iii) tariff terms and conditions made generally available to all Local Providers.

2.3 Termination Upon Default.

Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party; *provided however*, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and that the defaulting Party does not cure the alleged default within thirty (30) Days of receipt of written notice thereof. Following a non-defaulting Party's notice to the defaulting Party of its Default, the non-defaulting Party shall not be required to process new service orders until the Default is timely cured. Default is defined to include:

- (a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or

- (b) A Party's Certificate of Operating Authority has been revoked by the Commission, or
- (c) *A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, or the violation of any of the material terms or conditions of this Agreement.*

2.4 Termination Upon Ordering and Implementation Inactivity.

Notwithstanding anything to the contrary contained herein, CenturyTel may terminate this Agreement in the event IDT has not (a) placed any initial orders for any of the services to be provided pursuant to this Agreement and (b) implemented any said services to IDT customers within one (1) year from the Effective Date of this Agreement.

2.5 Termination Upon Sale.

Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof if such Party sells or otherwise transfers the area or portion thereof to a non-affiliate. The selling or transferring Party shall provide the other Party with at least sixty (60) Business Days' prior written notice of such termination, which shall be effective on the date specified in the notice. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas.

2.6 Liability Upon Termination.

Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

3. Amendments.

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

4. Assignment.

Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a Subsidiary or Affiliate of that Party without consent, but with written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party, and the other Party being reasonably satisfied that the assignee is able to fulfill the assignor's obligations hereunder.

5. Authority.

Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement. Each Party represents he or she has had the opportunity to consult with legal counsel of his or her choosing and neither Party has relied on the other Party's counsel or on representations by the other Party's personnel not specifically contained in this Agreement, in entering into this Agreement

6. Responsibility for Payment.

CenturyTel may charge IDT and IDT will pay CenturyTel a deposit before CenturyTel is required to perform under this agreement, if CenturyTel so deems a deposit appropriate after examination of IDT's payment and/or credit history. Such deposit will be calculated based on CenturyTel's estimated two-month charges to IDT. Deposits may be modified from time to time based on actual billing history and the credit rating of IDT. Interest will be paid on the deposit in accordance with state requirements for end user deposits.

7. CLEC Profile.

Before direct connection orders can be taken, the CLEC Profile in the form provided by CenturyTel must be completed by IDT and returned to CenturyTel; and, if required, by CenturyTel, an advanced deposit paid. Among other things IDT will provide CenturyTel with its Operating Company Number (OCN), Company Code (CC), and Customer Carrier Name Abbreviation (CCNA) as described in the CenturyTel Service Guide. IDT agrees to warrant to CenturyTel that it is a certified provider of telecommunications service in the State. IDT will document its Certificate of Operating Authority on the CLEC Profile and agrees to promptly update this CLEC Profile as required to reflect its current certification.

8. Contact Exchange.

The Parties agree to exchange and to update contact and referral numbers for order, inquiry, trouble reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the local, State and Federal governments.

9. Ordering and Electronic Interface.

Manual interface is currently being used for IDT to order services, and it includes facsimile orders and E-mail orders in accordance with the CenturyTel Service Guide. Conventional electronic ordering interface is not currently available. If CenturyTel later makes electronic interface ordering available to IDT, then the Parties agree that, to the extent practicable, electronic interface will be used by IDT for ordering services and manual interface will be discontinued unless this is impracticable.

10. Billing and Payment.

Except as provided elsewhere in this Agreement and where applicable, in conformance with Multiple Exchange Carrier Access Billing (MECAB) guidelines and Multiple Exchange Carriers Ordering and Design Guidelines for Access Services-Industry Support Interface (MECOD), IDT and CenturyTel agree to exchange all information to accurately, reliably, and properly order and bill for features, functions and services rendered under this Agreement.

10.1 Back Billing.

Neither Party will bill the other Party for previously unbilled charges for services that were provided longer ago than one (1) year or the applicable Federal or State statute of limitations, whichever is longer.

10.2 Dispute.

If one Party disputes a billing statement issued by the other Party, the billed Party shall notify Provider in writing regarding the nature and the basis of the dispute within thirty (30) business days of the receipt of the bill or the dispute shall be waived, subject to any State regulatory requirements. The Parties shall diligently work toward resolution of all billing issues. Notwithstanding the foregoing, if Provider notifies Party of the unpaid charges the dispute provisions thereof shall prevail.

10.3 Late Payment Charge.

If any undisputed amount due on the billing statement is not received by Provider on the payment due date, Provider shall calculate and assess, and Customer agrees to pay a charge on the past due balance at the lesser of an interest rate equal to the amount of 1½% charge per month, or the maximum nonusurious rate of interest under applicable law. Such late payment charges shall be included on the Provider's next statement.

10.4 Due Date.

Payment is due thirty (30) calendar days from the bill date.

10.5 Audits.

10.5.1 In General

Either Party may conduct an audit of the other Party's books and records pertaining to the Services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the other Party's accuracy of billing, data and invoicing in accordance with this Agreement. Any audit shall be performed as follows: (i) following at least thirty (30) Business Days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.

10.5.2 Traffic Audits.

On twenty (20) Business Days written notice, each Party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic. CTOC and IDT shall retain records of call detail for a minimum of nine months from which a PIU can be ascertained. The audit shall be accomplished during normal business hours at an office designated by the Party being audited. Audit requests shall not be submitted more frequently than one (1) time per calendar year. Audit requests are limited to one (1) per calendar year including and covering Audits per Sections 10.5.1 and 10.5.2. Audits shall be performed by a mutually acceptable independent auditor paid for by the Party requesting the audit. The PIU shall be adjusted based upon the audit results and shall apply to the usage for the quarter the audit was completed, to the usage for the quarter prior to the completion of the audit, and to the usage for the two quarters following the completion of the audit. If, as a result of an audit either Party is found to have overstated the PIU by twenty percentage points (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit.

11. Binding Effect.

This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

12. Capacity Planning and Forecasting.

Within twenty (20) Business Days from the effective date of this Agreement, or as soon after the effective date as practicable, the Parties agree to meet and develop joint planning and forecasting responsibilities which are applicable to, number portability and interconnection services. A Party may delay processing the other Party's service orders should the Parties not perform obligations as specified in this Section 12. Such responsibilities shall include but are not limited to the following:

12.1 The Parties will establish periodic reviews of network and technology plans and will notify one another no later than six (6) months in advance of changes that would impact either Party's provision of services.

12.2 Each Party will furnish to the other Party information that provides for statewide annual forecasts of order activity, in-service quantity forecasts, and facility/demand forecasts.

12.3 The Parties will develop joint forecasting responsibilities for traffic utilization over trunk groups and yearly forecasted trunk quantities as set forth in Article IV.

12.4 Each Party shall notify the other Party promptly of changes greater than ten percent (10%) to current forecasts (increase or decrease) that generate a shift in the demand curve for the following forecasting period. A Party's orders that exceed the capacity of that Party's forecast shall only be filled to the extent the requested capacity is Currently Available.

12.5 Each Party reserves the right to condition the fulfillment of additional service orders on satisfactory fill rates by the ordering Party in previously ordered capacity, or on payment for all of the additional capacity absent satisfactory fill rates.

13. Compliance with Laws and Regulations.

Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

14. Confidential Information.

14.1 Identification.

Either Party may disclose to the other proprietary or confidential customer, technical, or business information in written, graphic, oral or other tangible or intangible forms ("Confidential Information").

Notwithstanding the foregoing, preorders and all orders for services placed by IDT pursuant to this Agreement, and information that would constitute customer proprietary network information of IDT end user customers pursuant to the Act and the rules and regulations of the FCC, as well as recorded usage information

with respect to IDT end users, whether disclosed by IDT to CenturyTel or otherwise acquired by CenturyTel in the course of its performance under this Agreement shall be considered Confidential Information.

14.2 Handling.

In order to protect such Confidential Information from improper disclosure, each Party agrees:

- (a) That all Confidential Information shall be and shall remain the exclusive property of the source;
- (b) To limit access to such Confidential Information to authorized employees who have a need to know the Confidential Information for performance of this Agreement;
- (c) To keep such Confidential Information confidential and to use the same level of care to prevent disclosure or unauthorized use of the received Confidential Information as it exercises in protecting its own Confidential Information of a similar nature;
- (d) Not to copy, publish, or disclose such Confidential Information to others or authorize anyone else to copy, publish, or disclose such Confidential Information to others without the prior written approval of the source;
- (e) To return promptly any copies of such Confidential Information to the source at its request; and
- (f) To use such Confidential Information only for purposes of fulfilling work or services performed hereunder and for other purposes only upon such terms as may be agreed upon between the Parties in writing.

14.3 Exceptions.

These obligations shall not apply to any Confidential Information that was legally in the recipient's possession prior to receipt from the source, was already known or received in good faith from a third party, now is or later becomes publicly known through no breach of confidential obligation by the recipient, was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the source, was expressly approved for release by written authorization of the disclosing Party, or that is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however, that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protective arrangements.

14.4 Survival.

The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of two (2) years from the date of the initial disclosure of the Confidential Information.

15. Consent.

Where consent notice, approval, mutual agreement, or similar action is permitted or required of a Party by any provision of this Agreement, it shall not be conditional, unreasonably withheld, or delayed.

16. Fraud.

Each Party assumes responsibility for all fraud associated with its end-user customers and accounts. Neither Party shall bear responsibility for, nor is it required to investigate or make adjustments to the other Party's account in cases of fraud.

17. Reimbursement of Expenses.

In performing under this Agreement either Party may be required to make expenditures or otherwise incur costs that are not otherwise reimbursed under this Agreement. The Party providing such services shall provide the other Party written notification when cost reimbursement from that Party is expected. The other Party will acknowledge and agree to the estimated cost before the providing Party is entitled to such reimbursement.

18. Dispute Resolution.

18.1 Alternative to Litigation.

Except for the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedures as the sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

18.2 Negotiations.

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

18.3 Arbitration.

If the negotiations do not resolve the dispute within sixty (60) Business Days of the initial written request, the dispute shall be submitted to binding arbitration. At the election of either Party, arbitration shall be before the Commission. Otherwise, arbitration shall be by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") except that the Parties may select an arbitrator outside American Arbitration Association rules upon mutual agreement. If the State Commission is selected as the arbitrator, its arbitration rules shall apply. Otherwise the rules described in part (a) below shall be applicable.

- (a) A Party may demand such arbitration in accordance with the procedures set out in AAA rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may

submit in writing to a Party, and that Party shall so respond to, a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission. Each Party is also entitled to take the oral deposition of one individual of another Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) Business Days of the demand for arbitration. The arbitration shall be held in a mutually agreeable city. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) Business Days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause.

- (b) Judgment upon the award rendered by the arbitrator, whether it be the Commission or an AAA or other arbitrator, may be entered in any court having jurisdiction

18.4 Expedited Arbitration Procedures.

If the issue to be resolved through the negotiations referenced in Section 18.2 directly and materially affects service to either Party's end-user customers, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration shall be five (5) Business Days. Once such a service affecting dispute is submitted to arbitration, and if arbitration with the Commission is not selected, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the American Arbitration Association (i.e., rules 53 through 57).

18.5 Costs.

Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the reasonable costs of production of documents (including search time and reproduction costs).

18.6 Continuous Service.

The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their obligations in accordance with this Agreement. However, during the pendency of any dispute resolution procedures each Party reserves the right not to accept new service orders from the other Party.

19. Entire Agreement.

This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

20. Expenses.

Except as applicable in accordance with Section 17, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

21. Force Majeure.

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other material change of circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); *provided however*, that the Party so affected shall use diligent efforts to avoid or remove such causes of nonperformance and both Parties shall proceed whenever such causes are removed or cease. It is expressly agreed that financial difficulties of a Party are not subject to this Section.

22. Good Faith Performance.

In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, consent, approval or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be conditional, unreasonably withheld or delayed.

23. Governing Law.

This Agreement shall be governed by and construed in accordance with applicable federal and (to the extent not inconsistent therewith) domestic laws of the state where the services are provided or the facilities reside.

24. Standard Practices.

The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide. IDT agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under this Agreement.

25. Headings.

The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.

26. Independent Contractor Relationship.

The persons provided by each Party shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state

withholding. Each Party shall indemnify the other for any loss, damage, liability, claim, demand, or penalty that may be sustained by reason of its failure to comply with this provision.

27. Law Enforcement Interface.

- 27.1 Except to the extent not available in connection with CenturyTel's operation of its own business, CenturyTel shall provide seven day a week/twenty-four hour a day assistance to law enforcement persons for emergency traps, assistance involving emergency traces and emergency information retrieval on customer invoked CLASS services.
- 27.2 CenturyTel agrees to work jointly with IDT in security matters to support law enforcement agency requirements for taps, traces, court orders, etc.
- 27.3 Each Party will, in non-emergency situations, inform the requesting law enforcement agencies that the end-user to be wire tapped, traced, etc. is the other Party's Customer and shall refer them to the other Party.

28. Liability and Indemnity.

28.1 Indemnification.

Subject to the limitations set forth in Section 28.4 of this Article III, each Party agrees to release, indemnify, defend, and hold harmless the other Party and its parent and its affiliates and their officers, directors and employees (the "indemnified Party") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for losses, damages, or destruction of property, whether or not owned by others, proximately caused by the indemnifying Party's negligence or willful misconduct, regardless of form of action. The indemnified Party agrees to notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Section for settlement by the indemnified Party or any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to assume such defense. In the event of such failure to assume defense, the indemnifying Party shall be liable for any reasonable settlement made by the indemnified Party without approval of the indemnifying Party.

28.2 End-User and Content-Related Claims.

The Indemnifying Party agrees to release, indemnify, defend, and hold harmless the other Party, its affiliates, and any third-party provider or operator of facilities involved in the provision of services or Facilities under this Agreement (collectively, the "Indemnified Party") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by the Indemnifying Party's end-users against an Indemnified Party arising from Services or Facilities. The Indemnifying Party further agrees to release,